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**PRELIMINARY DRAFT  
No. 3047**

**PREPARED BY  
LEGISLATIVE SERVICES AGENCY  
2006 GENERAL ASSEMBLY**

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**DIGEST**

**Citations Affected:** IC 29-1-7.5-3.

**Synopsis:** Unsupervised estates. Specifies additional powers that a personal representative may exercise without order of the court in the administration of an unsupervised estate.

**Effective:** July 1, 2006.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 29-1-7.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. **(a)** Subject to section 2(d) of this chapter, a personal representative who administers an estate under this chapter may do the following without order of the court:

(1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.

(2) Receive assets from fiduciaries or other sources.

(3) Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as ~~he~~ **the personal representative** may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) **(A)** execute and deliver a deed of conveyance for cash payment of all sums remaining due on the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) **(B)** deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the



1 sale of other assets, in federally insured interest-bearing accounts,  
2 readily marketable secured loan arrangements or other prudent  
3 investments which would be reasonable for use by trustees  
4 generally.

5 (6) Acquire or dispose of an asset, including land in this or  
6 another state, for cash or on credit, at public or private sale; and  
7 manage, develop, improve, exchange, partition, change the  
8 character of, or abandon an estate asset.

9 (7) Make ordinary or extraordinary repairs or alterations in  
10 buildings or other structures, demolish any improvements, raze  
11 existing or erect new party walls or buildings.

12 (8) Subdivide, develop, or dedicate land to public use; make or  
13 obtain the vacation of plats and adjust boundaries; or adjust  
14 differences in valuation on exchange or partition by giving or  
15 receiving considerations; or dedicate easements to public use  
16 without consideration.

17 (9) Enter for any purpose into a lease as lessor or lessee, with or  
18 without option to purchase or renew, for a term within or  
19 extending beyond the period of administration.

20 (10) Enter into a lease or arrangement for exploration and  
21 removal of minerals or other natural resources or enter into a  
22 pooling or unitization agreement.

23 (11) Abandon property when, in the opinion of the personal  
24 representatives, it is valueless, or is so encumbered, or is in  
25 condition that it is of no benefit to the estate.

26 (12) Vote stocks or other securities in person or by general or  
27 limited proxy.

28 (13) Pay calls, assessments, and other sums chargeable or  
29 accruing against or on account of securities, unless barred by the  
30 provisions relating to claims.

31 (14) Hold a security in the name of a nominee or in other form  
32 without disclosure of the interest of the estate but the personal  
33 representative is liable for any act of the nominee in connection  
34 with the security so held.

35 (15) **Hold, manage, safeguard, and control the estate's real**  
36 **and personal property, and** insure the assets of the estate  
37 against damage, loss and liability and ~~himself~~ **insure the**  
38 **personal representative personally** against liability as to third  
39 persons.

40 (16) Borrow money with or without security to be repaid from the  
41 estate assets or otherwise and advance money for the protection  
42 of the estate.

43 (17) Effect a fair and reasonable compromise with any debtor or  
44 obligor, or extend, renew, or in any manner modify the terms of  
45 any obligation owing to the estate. If the personal representative  
46 holds a mortgage, pledge, or other lien upon property of another



1 person, ~~he~~ **the personal representative** may, in lieu of  
 2 foreclosure, accept a conveyance or transfer of encumbered assets  
 3 from the owner thereof in satisfaction of the indebtedness secured  
 4 by lien.

5 (18) Pay taxes, assessments, compensation of the personal  
 6 representative, and other expenses incident to the administration  
 7 of the estate.

8 (19) ~~sell or exercise stock subscription or conversion rights and~~  
 9 ~~consent, directly or through a committee or other agent, to the~~  
 10 ~~reorganization, consolidation, merger, dissolution, or liquidation~~  
 11 ~~of a corporation or other business enterprise; Do any of the~~  
 12 ~~following:~~

13 (A) **Hold an interest in a proprietorship, partnership,**  
 14 **limited liability company, business trust, corporation, or**  
 15 **other domestic or foreign form of business or enterprise.**

16 (B) **Continue a business.**

17 (C) **Take any action that may be taken by shareholders,**  
 18 **partners, members, or property owners, including**  
 19 **contributing additional capital to or merging,**  
 20 **consolidating, reorganizing, recapitalizing, dissolving, or**  
 21 **otherwise changing the form of the business organization.**

22 (20) Allocate items of income or expense to either estate income  
 23 or principal, as permitted or provided by IC 30-2-14.

24 (21) Employ persons, including attorneys, auditors, investment  
 25 advisors, or agents, even if they are associated with the personal  
 26 representative, to advise or assist the personal representative in  
 27 the performance of ~~his~~ **the personal representative's**  
 28 administrative duties; act without independent investigation upon  
 29 their recommendations; and instead of acting personally, employ  
 30 one (1) or more agents to perform any act of administration,  
 31 whether or not discretionary.

32 (22) ~~prosecute or defend claims or proceedings in any jurisdiction~~  
 33 **Do any of the following concerning a claim or demand made**  
 34 **in favor of or against the estate** for the protection of the estate  
 35 and of the personal representative in the performance of ~~his~~ **the**  
 36 **personal representative's** duties:

37 (A) **Release, assign, settle, compromise, or contest the**  
 38 **claim or demand.**

39 (B) **Participate in mediation or submit to arbitration to**  
 40 **resolve any dispute concerning the claim or demand.**

41 (C) **Extend the time for payment of the claim or demand.**

42 (D) **Abandon the claim or demand.**

43 (23) Sell, mortgage, or lease any real or personal property of the  
 44 estate or any interest therein for cash, credit, or for part cash and  
 45 part credit, and with or without security for unpaid balances.

46 ~~(24) continue any unincorporated business or venture in which the~~



1 decedent was engaged at the time of his death:

2 (i) in the same business form for a period of not more than five  
3 (5) months from the date of appointment of a general personal  
4 representative if continuation is a reasonable means of  
5 preserving the value of the business including good will;

6 (ii) in the same business form for any additional period of time  
7 that may be approved by order of the court in a formal  
8 proceeding to which the persons interested in the estate are  
9 parties; or

10 (iii) throughout the period of administration if the business is  
11 incorporated by the personal representative and if none of the  
12 probable distributees of the business who are competent adults  
13 object to its incorporations and retention in the estate;

14 **(24) Select a settlement option under any qualified or**  
15 **nonqualified benefit or retirement plan, annuity, or life**  
16 **insurance payable to the estate, and take appropriate action**  
17 **to collect the proceeds.**

18 **(25) incorporate any business or venture in which the decedent**  
19 **was engaged at the time of his death; Inspect and investigate**  
20 **property held, directly or indirectly, by the personal**  
21 **representative for the purpose of:**

22 **(A) determining the application of environmental law with**  
23 **respect to the property; and**

24 **(B) doing the following:**

25 **(i) Take action to prevent, abate, or remedy, an actual or**  
26 **potential violation of an environmental law affecting the**  
27 **property, whether taken before or after the assertion of**  
28 **a claim or the initiation of governmental enforcement by**  
29 **federal, state, or local authorities.**

30 **(ii) Compromise claims against the estate that may be**  
31 **asserted for an alleged violation of environmental law.**

32 **(iii) Pay the expense of inspection, review, abatement, or**  
33 **remedial action to comply with the environmental law.**

34 **(26) satisfy and settle claims;**

35 **(27) (26) Distribute assets of the estate upon such terms as he the**  
36 **personal representative may impose. To the extent practicable,**  
37 **taking into account the decedent's probable intention, the**  
38 **power to distribute assets includes the power to:**

39 **(A) pay an amount to a distributee who is under a legal**  
40 **disability or who the personal representative reasonably**  
41 **believes to be incapacitated by:**

42 **(i) paying the amount directly to the distributee or**  
43 **applying the amount for the distributee's use and**  
44 **benefit;**

45 **(ii) paying the amount to the guardian appointed for the**  
46 **distributee;**



(iii) paying the amount to a custodian under the Uniform Transfers to Minors Act (IC 30-2-8.5) or a custodial trustee under the Uniform Custodial Trust Act (IC 30-2-8.6); or

(iv) paying the amount to the trustee of a trust established by the decedent or by the personal representative under subsection (b); and

(B) make distributions of estate income and principal in kind, in cash, or partly in each, in shares of differing composition, without regard to the income tax basis of specific property allocated to a distributee in divided or undivided interests. ~~and~~

~~(28)~~ (27) Perform any other act necessary or appropriate to administer the estate.

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust for the purpose of making distributions to a distributee who is under a legal disability or whom the personal representative reasonably believes is incapacitated. In establishing a trust under this subsection, a personal representative may exercise:

(1) the authority given to custodians under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) to create a trust that satisfies the requirements of Section 2503 of the Internal Revenue Code and the regulations adopted under that section; or

(2) the authority given to an attorney-in-fact under IC 30-5-5-15(a)(3) to establish a revocable trust for the benefit of a principal.

